

**CONTRACT FOR THE PURCHASE, BUILD, AND IMPLEMENTATION OF A STATEWIDE
INTEGRATED SYSTEM TO REPLACE KDOR'S INTERNATIONAL REGISTRATION
PROGRAM , AND TO DEVELOP THE CUSTOMIZATION FOR THE COMMERCIAL VEHICLE
FEE DEFINED IN H.B. 2557 (2012), ACCOUNTING AND DISTRIBUTION FOR THESE
PROGRAMS AND THEIR ASSOCIATED INTERFACES BETWEEN THE STATE OF KANSAS
AND CELTIC CROSS HOLDINGS, INC.**

This Contract is entered into by and between the Kansas Department of Revenue, (hereinafter referred to as "KDOR" or the "State") and any successor, and Celtic Cross Holdings, Inc. a Arizona Corporation, (hereinafter referred to as "Contractor") pursuant to the State's Request for Proposal EVT0001929 and any attached exhibits thereto. The nature of this Contract is to provide for the purchase and address obligations surrounding the implementation of a Statewide integrated system to replace KDOR's International Registration Program ("IRP") and to develop the customization for the Commercial Vehicle Fee defined in H.B. 2557 (2012), accounting and distribution for these programs and their associated interfaces.

WHEREAS, Contractor is an expert in designing, programming, developing and implementing statewide web-based IRP information systems and associated integration services;

WHEREAS, the State desires to purchase, build and implement a statewide, web-based IRP information system and associated integration services; (hereinafter referred to as "IRP System") and in connection therewith has created a Request for Proposal/Bid Event Number EVT0001929 and subsequent amendments and revisions (collectively referred to herein as the "RFP"), copies of which are attached hereto and collectively identified as Attachment 3- RFP EVT0001929, including amendments and addendums thereto, and associated Revised Offers;

WHEREAS, Contractor desires to build, configure, program and implement the IRP System, and in connection therewith has submitted a Proposal dated January 23rd, 2013, and subsequent amendments and revisions (collectively referred to herein as the "Proposal"), copies of which are attached hereto and collectively identified as "Attachment 6" -- The Contractor's response to RFP EVT0001929, and all information submitted by the Contractor to support the response, including manuals and descriptions covering the operating characteristics of the proposed IRP System;

WHEREAS, State desires to engage Contractor to provide all development, configuration, and implementation Deliverables and Services described in the RFP EVT0001929, the Proposal, this Contract, Statement of Work and all attached Attachments; and

WHEREAS, Contractor agrees to provide all development and implementation of Deliverables and Services described in the RFP EVT0001929, the Proposal, and this Contract, and the State is relying on Contractor for the development and implementation of a fully operational statewide, web-based IRP information system and associated integration services for the State and to develop the customization for the Commercial Vehicle Fee defined in H.B. 2557 (2012).

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

(Note – section numbers for this Contract begin with Section 5.1, the parties have retained the original numbering system from the RFP).

- 5.1 Contract Documents.** This Request and any amendments and the response and any amendments of the Contractor shall be incorporated along with the DA-146a into the written contract which shall compose the complete understanding of the parties.

In the event of a conflict in terms of language among the documents, the following order

of precedence shall govern:

- Form DA-146a;
- Written modifications to the executed contract;
- Written contract signed by the parties;
- The RFP #1929 (EVT0001929), including amendments and addendums thereto, and its technical and functional specifications and requirements; and
- The Contractor's responses to RFP #1929, and all information submitted by the Contractor to support the response, including manuals and descriptions covering the operating characteristics of the proposed IRP System/Software.

The Following Attachments, and their subparts, are attached hereto and hereby incorporated into this contract by reference:

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| Attachment 1 | State of Kansas Form DA-146a Contractual Provisions Attachment |
| Attachment 2 | Statement of Work |
| Attachment 3 | RFP No. 1929 – EVT0001929 (172 pages) |
| Attachment 4 | Annual Maintenance Agreement |
| Attachment 5 | Reserved. |
| Attachment 6 | Contractor's Proposal, and any subsequent amendments |
| Attachment 7 | Interface Requirements |
| Attachment 8 | History of QA |
| Attachment 9 | Deliverable Signoff |

5.2 Contract. The Contractor will be required to enter into a written contract with the State. The Contractor agrees to accept the provisions of form DA-146a (Contractual Provisions Attachment – please see RFP Section 5) which is incorporated into all contracts with the State and is attached to this request.

5.3 Definitions.

A. Acceptance – is the State's written notification to the Contractor that it elects to retain and pay for the software, deliverables, or services.

B. Reserved.

C. Custom Software – all computer programs, procedures, rules, or routines in object code machine-readable language, include source code, which instruct the operation of the computer and are developed under or pursuant to this contract. Such software may be on media, which includes, but is not limited to, CDs, tapes, disks, or other methods or recording programs and routines.

D. Delivery Date – is the contractual date and time agreed upon by the parties and stated in the contract on which a stated Deliverable shall be received at the Site. Delivery of deliverables to the State must be received by 10:00 a.m. Site local time to be timely.

E. Deliverable – Any measurable, tangible, verifiable outcome, result, or Work Product that is produced as part of the work to complete this Project or any part of this Project. Also included is an external deliverable, which is a Deliverable that is subject to approval and Acceptance by the K-CRAFTS Project Director or other authorized State personnel.

F. Documentation – is any written material relating to or explaining the operation or use of the Program and related Work Product. Documentation also means and includes all basic, descriptive training and instructive materials pertaining to the Software such as

flow charts, instruction manuals, logic diagrams, and calculations, which shall be furnished by the licensor as stated in this Contract. Documentation also means all written materials pertaining to the licensed software as the context may require, including, but not limited to, user manuals specifications, descriptive information, and materials, file layouts and data models; design software modification, enhancement or update; and materials pertaining to the features, installation, use, functioning, and operation of the software, implementation plans and other documentation developed in connection with the software installation planning, test plans, and acceptance or other documentation.

G. Escrow Agent – The Contractor will enter into an Escrow Agreement with an escrow firm. This Escrow Agent shall be the Depository for all Pre-Existing Software, Software developed pursuant to this Contract, Source Code, documentation, and all other related materials delivered under this Contract.

H. First Full Functional Use – shall mean and include, but not be limited to, a finding by the State that all components and equipment have been delivered and installed; that the software has been installed on the equipment; that all documentation is complete; that connectivity with all identified interfaces has been established; that full functionality exists among all elements of the system; that all aspects of operation are determined by the State to be in working condition and performing with internal consistency and substantially conform to the specifications contemplated by this Contract.

I. IRP System - statewide, web-based IRP information system and associated integration services that is being provided to the State by the Contractor pursuant to this contract.

J. Intellectual Property Rights – all rights in all U.S. and foreign letters patent and applications for letters patent, rights in copyright and rights of authorship, and rights in trade secrets under common law, state law, federal law, and the laws of foreign countries sufficient for the State to use the software without violating the Intellectual Property Rights of any person.

K. Milestone – a significant event identified in the project plan, including but not limited to completion of a major deliverable.

L. Modification – is a material addition, deletion, or change to the functionality of a component of the system requested by the State which shall be provided by the Contractor under this contract.

M. Object Code – is the machine-executable code derived in whole or part from the compiled source code.

N. Pre-Existing Software – all computer programs, procedures, rules, or routines in object machine-readable language, including source code, which instruct the operation of the computer and are furnished under this contract. Such software may be media including CDs, tape, disks, chips, or other methods of recording programs and routines.

O. Problem – is any actual, apparent, or suspected failure of any Software Product, Work Product, version, or revision to function in conformity with its specifications or user documentation or to perform in a consistent and correct manner. The term includes any work Contractor is performing that the State determines is unsatisfactory.

P. Problem Resolution – a workaround procedure, supplemental code (i.e., a patch), or a new release that eliminates a problem.

Q. Processor – is the equipment that allows the software to execute its designed functions.

R. Revision – a revision consists of modifications and corrections to bring existing software functionality to required standards. The Contractor shall deliver Revisions for both Pre-Existing Software and Custom Software as necessary to comply and maintain

compliance with the requirements of this Contract, without additional cost to the State.

S. **Services** – describes all work to be performed by Contractor as set forth in the contract and change request orders/task orders.

T. **Site** – the location (as determined by the State) of the State's facilities where the software and software documentation shall be used.

U. **Source Code** – is any human-readable code developed from which the program when compiled becomes object code.

V. **State** – means the State of Kansas, Department of Revenue, and its K-CRAFTS Project, and any State of Kansas Department, Agency, Board of Trustees, or other governing body, affiliates, Officers, Directors, Agents, and Employees.

W. **Specifications** -- means the explicit description of the functionality, technology, capabilities, functional requirements, technical requirements, and other requirements for the IRP System as defined in the General System Designs, Detailed System Designs, and the agreed upon business, functional and technical requirements that have been incorporated into this contract.

X. **Reserved.**

Y. **Stakeholder** – individuals and organizations that are involved in or may be affected by project activities.

Z. **Good Response Time** – means a software function executed by a system user on the IRP System that takes less than two seconds to complete. The State will factor in issues of local network and internet environment issues that are unrelated to the IRP System and its functional and technical requirements as well as the complexity of the transactions being processed, such as fee calculation for 1000 vehicles that are traveling to all 59 jurisdictions, when evaluating response time issues.

AA. **Key Personnel** -- is the staff proposed and identified by the Proposer in its response to this procurement to work under this Contract. The Proposer shall identify, as Key Personnel, those persons who will have day-to-day responsibility for the Proposer's management of the K-CRAFTS Project as well as team leaders or critical technical experts responsible for the accomplishment of major K-CRAFTS Project tasks. Primary presenters at the software demonstrations and oral presentations shall be Key Personnel. Key Personnel shall be employed by the Proposer or the subcontractor(s) or have letters of commitment for employment contingent upon award.

BB. **Procurement Terms** – a glossary of common procurement terms is available at <http://da.ks.gov/purch>, under "Purchasing Forms".

5.4 **Contract Formation.** No contract shall be considered to have been entered into by the State until a written contract has been signed by the selected Contractor Proposer and all statutorily required signatures and certifications have been rendered by the State.

5.5 **Notices.** All notices, demands, requests, approvals, reports, instructions, consents, or other communications (collectively "notices") which may be required or desired to be given by either party to the other shall be **IN WRITING**. Contractor shall address all Notices to the State as follows:

Kansas Division of Purchases
900 SW Jackson St, Room 102N
Topeka, Kansas 66612-1286
RE: Bid number EVT0001929

or to any other persons or addresses as may be designated by Notice from the State. Contractor shall provide an official address for all Notices to it from the State.

5.6 Termination for Cause. The Director of Purchases may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:

- The Contractor fails to make delivery of goods or services as specified in this contract.
- The Contractor provides substandard quality and/or workmanship.
- The Contractor fails to perform any of the provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms.

The Director of Purchases shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten days from the receipt of the notice (or such longer period as State may authorize in writing), the Director of Purchases shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three days of the date of the notice.

In the event of the termination or expiration of this Contract, Contractor also agrees that should the Contract terminate or expire for any reason, including non-renewal of the Contract, State will withhold 100% of any scheduled payment to Contractor. These payments will be released only when the State decides in its sole determination that any and all obligations of Contractor related to this Contract have been satisfied to the State's satisfaction as of the termination or expiration date of this Contract.

5.7 Termination for Convenience. The Director of Purchases may terminate performance of work under this contract in whole or in part whenever, for any reason, the Director of Purchases shall determine that the termination is in the best interest of the State of Kansas. In the event that the Director of Purchases elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least 30 days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.

In the event of the termination or expiration of this Contract, Contractor also agrees that should the Contract terminate or expire for any reason, including non-renewal of the Contract, State will withhold 100% of any scheduled payment to Contractor. These payments will be released only when the State decides in its sole determination that any and all obligations of Contractor related to this Contract have been satisfied to the State's satisfaction as of the termination or expiration date of this Contract.

5.8 Debarment of State Contractors. Any Contractor who defaults on delivery or does not perform in a satisfactory manner as defined in this Request may be barred for a period up to three years, pursuant to K.S.A. 75-37,103, or have their work evaluated for pre-qualification purposes.

5.9 Rights and Remedies. If this contract is terminated, the State, in addition to any other rights provided in this contract, may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed, any completed materials. The State shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

In the event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided and/or goods which were accepted by State

subject to any offset by State for actual damages including loss of federal matching funds.

In the event State determines in its sole discretion that Contractor has not provided the services or the software does not operate in the manner expected by the State, Contractor shall be responsible for any and all costs and expenses, including attorney's fees and expenses to hire other vendors to modify, complete, adjust, finish, or fix the software as determined by the State.

The rights and remedies of the State provided in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

- 5.10 Force Majeure.** The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, freight embargoes, or similar events.
- 5.11 Waiver.** Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by State shall not constitute a waiver.
- 5.12 Independent Contractor.** The Contractor, in the performance of this contract, shall be acting solely as an independent contractor and not as an agent, employee, partner, joint venture, or associate of the State. The employees or agents of the Contractor shall not be construed to be the employees or agents of the State for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation, and social security, as well as all income tax withholdings for its employees, and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

- 5.13 Staff Qualifications.** The Contractor warrants that all persons assigned by it to the performance of this contract shall be employees or contracted agents of the Contractor (or a specified Subcontractor) and shall be fully qualified to perform the work required. The State shall review and/or approve/disapprove all Contractor staff prior to assignment. This may include but is not limited to review of resumes, interviews, and contacting references. The State also reserves the right to review and/or approve/disapprove all contract staff prior to the start of each deliverable. Contractor staff will be expected to work as part of a cooperative team effort with contracted staff from other firms as well as with State staff. Contractor agrees to timely supply resume information of staff to the K-CRAFTS Project Manager. Contractor's staff will perform their duties in accordance with State policies, procedures, and requirements, using State specifications and standards. The policies, procedures, requirements, specifications, and standards will be provided to the Contractor upon request. The work day schedule and leave time for Contractor's staff will be coordinated and approved by the State. In cases where the State's holidays conflict with Contractor's, the State's holiday schedule will prevail.

Removal of Staff: Upon the written request of the State of Kansas, any Contractor staff, who in the opinion of the State of Kansas is unacceptable, shall be immediately removed from the project staff. Such removal request shall not be made without substantial reason and rationale, which must be provided in writing. In the event that any Contractor staff is removed, the Contractor shall fill the vacancy promptly with an acceptable replacement, as determined by the K-CRAFTS Project Manager, in a manner that does not adversely impact the project. When any replacement is necessary, the "ramp up time" for the replacement staff time will be at no cost to the State. The "ramp up time" for

replacement staff will be determined by the State and the Contractor on a case-by-case basis.

Substitution and Replacement Staff: Staff whose names and resumes are submitted in the proposal shall not be removed from this project without prior approval of the K-CRAFTS Project Manager. Substitute or additional Staff shall not be used for this project until a resume is received and approved by the K-CRAFTS Project Manager. Any Contractor staff replaced for any reason shall be replaced promptly with an individual who possesses equal or greater relevant abilities and qualifications to those previously approved. State must approve in writing all re-placement Staff and can require Contractor to hire any person or company should the State determine it is beneficial for the Project. Contractor shall be responsible for any and all costs and expenses for any replacement Staff.

Contractor will not reassign, terminate, or add staff for this contract without prior written consent issued by the State.

Failure of the Contractor to provide qualified staffing at the level required by the proposal specifications may result in termination of this contract and/or damages.

- 5.14 Subcontractors.** The Contractor shall be the sole source of contact for this Contract. The State will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions, and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.

The State of Kansas requires tax information regarding all subcontractors be disclosed on the Signature Sheet, indicating company name, contact information, and tax number. Additional pages may be added, as required (see "TAX CLEARANCE FORM," RFP Section 6).

- 5.15 Conflict of Interest.** The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of the State and who are providing services involving this contract or services similar in nature to the scope of this contract to the State. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least two years after his/her termination of employment with the State. The Contractor shall identify all other existing or potential conflicts of interest that would prevent the Contractor from fully performing the tasks described in the contract. Such disclosure will be a continuing requirement subsequent to award of a contract and for the life of the contract.

- 5.16 Confidentiality.** All State information or data is considered confidential information and data. Contractor agrees to return any or all data furnished by the State promptly at the request of State, in whatever forms it is maintained by Contractor. Upon termination or expiration of this contract, the Contractor and each of the persons and entities working for the Contractor shall return to the State all data or information, electronic or written, or descriptive materials, or any other related matter of any type including but not limited to drawings, blueprints, descriptions, or other papers or documents which contain any such confidential information.

- A. Contractor will have access to information and private or confidential data, maintained by the State of Kansas, to the extent necessary to carry out Contractor's responsibilities under this contract. This information and data may include, but is not limited to, personal financial information, information regarding undercover law

enforcement agents, social security numbers, etc. Contractor agrees that any information or data it may have in its custody regarding any participant shall be kept strictly confidential. All the information and data of the State shall be considered to be confidential and private and Contractor may not disclose any information or data at any time to any person or entity. Contractor agrees to comply with all state and federal confidentiality laws in providing services under this contract.

1. Contractor shall be fully responsible for providing adequate supervision and training to its agents and employees to ensure compliance with all applicable State and Federal Acts regarding confidentiality and/or open records issues. No private or confidential data collected, maintained, or used in the course of performance of this contract shall be disseminated by Contractor except as required by statute, either during the period of the contract or thereafter. Contractor shall only use confidential information as required by this contract. All electronic data shall be secured through encryption or other comparable security measures.
 2. Contractor shall limit access to confidential information solely to staff of Contractor who has a need to know for purposes of fulfilling Contractor's obligations under this contract. Contractor shall not remove confidential information from State's site without State's prior written approval.
 3. Contractor shall hold State harmless and indemnify the State for expenses or damages, of any kind, incurred or suffered by the State as a result of the unauthorized disclosure of said data by Contractor or any agent, representative, employee, or subcontractor of Contractor. Contractor shall notify the State of any loss or breach of confidential information or data within 24 hours of receipt of such knowledge. Contractor shall also be responsible and liable for any and all damages to individuals due to such breaches or loss of confidential information. In the event of any security breach in which the confidential information of one or more individuals is compromised or is potentially compromised, Contractor shall be responsible and pay for any and all damages, expenses, and costs (including lost wages and efforts spent to defend or correct against identity theft) caused to the State or any individual for the disclosure of any State Information. Contractor shall provide notice to the State and affected individuals of such disclosure and shall also offer free of charge to individual or the State identify theft protection insurance for a period of five years. These terms shall also apply to any third-party vendor or subcontractor.
 4. The Contractor shall hold all such confidential information in trust and confidence for the State, and agrees that it and its employees will not, during the performance or after the termination of this contract, disclose to any person, firm, or corporation, or use for its own business or benefit any information obtained by it while in execution of the terms and conditions of this contract.
 5. Any staff, individual, or entity assigned to work for Contractor under this contract shall separately sign an agreement(s) to the effect of this Subsection and also but not limited to the Department of Revenue computer security user agreement.
- 5.17 **Nondiscrimination and Workplace Safety.** The Contractor agrees to abide by all federal, State, and local laws, rules, and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws, rules, and regulations may result in termination of this contract.
- 5.18 **Environmental Protection.** The Contractor shall abide by all federal, State, and local laws, rules, and regulations regarding the protection of the environment. The Contractor

shall report any violations to the applicable governmental agency. A violation of applicable laws, rules, or regulations may result in termination of this contract.

- 5.19. **Care of State Property.** The Contractor shall be responsible for the proper care and custody of any State owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract, and Contractor will reimburse State for such property's loss or damage caused by Contractor, normal wear and tear excepted.
- 5.20. **Prohibition of Gratuities.** The Contractor nor any person, firm, or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money, anything of value, or any promise for future reward or compensation to any State employee at any time.
- 5.21. **Retention of Records.** Unless the State specifies in writing a different period of time, the Contractor agrees to preserve and make available all of its books, documents, papers, records, and other evidence involving transactions related to this contract for a period of five years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one year following the termination of litigation, including all appeals, if the litigation exceeds five years.

The Contractor agrees that authorized federal and State representatives, including, but not limited to, personnel of the using agency or independent auditors acting on behalf of State and/or federal agencies shall have access to and the right to examine records during the contract period and during the five year post contract period. Delivery of and access to the records shall be at no cost to the State.

- 5.22. **Antitrust.** If the Contractor elects not to proceed, the Contractor assigns to the State all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular products or services purchased or acquired by the State pursuant to this contract.
- 5.23. **Modification.** This contract shall be modified only by the written agreement of the parties with the approval of the PNC. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective. No oral agreements will be effective to alter this contract. No term or condition of this Contract, documents incorporated by reference, exhibits, or related documents may be changed solely by the Contractor. This Contract, exhibits, documents incorporated by reference, and any other related documents cannot be amended, changed, or modified (despite any statement contained therein to the contrary), except by a written amendment executed by and mutually agreed upon by both parties. The DA-146a may not be modified or amended (see RFP Section 5, "CONTRACTUAL PROVISIONS ATTACHMENT").
- 5.24. **Assignment.** The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the State. The State may terminate this Contract in the event of a merger, dissolution, or sale of the controlling interest in the Contractor; sale of a substantial portion of the assets of the Contractor; or any action on the part of the Contractor to affect the assignment, conveyance, encumbrance, or other transfer of this Contract by the Contractor without the express prior written consent of the State. This contract may terminate in the event of its assignment, conveyance, encumbrance, or other transfer by the Contractor without the prior written consent of the State.

- 5.25 **Third Party Beneficiaries.** This contract shall not be construed as providing an enforceable right to any third party.
- 5.26 **Captions.** The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.
- 5.27 **Severability.** If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.
- 5.28 **Governing Law.** This contract shall be governed by and construed in accordance with the procedural and substantive laws of the State of Kansas.
- 5.29 **Jurisdiction:** The parties shall bring any and all legal proceedings arising under this Contract in the State of Kansas, District Court of Shawnee County. The United States District Court for the State of Kansas sitting in Topeka, Shawnee County, Kansas, shall be the venue for any federal action or proceeding arising hereunder in which the State is a party. The Eleventh Amendment of the United States Constitution is an inherent and incumbent protection with the State and need not be reserved, but prudence requires the State to reiterate that nothing related to this Contract shall be deemed a waiver of the Eleventh Amendment. Contractor shall be responsible for all the State's reasonable attorney's fees, costs, and expenses related to Contractor's negligence or breach of Contractor's obligations under the Contract. Contractor waives all defenses of lack of personal jurisdiction and forum non conveniens. Process may be served on Contractor in the manner authorized by applicable law or court rule.
- 5.30 **Integration.** This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the parties relating to the subject matter hereof. This contract between the parties shall be independent of and have no effect on any other contracts of either party.
- 5.31 **Criminal or Civil Offense.** Any conviction for a criminal or civil offense of an individual or entity that controls a company or organization or will perform work under this contract that indicates a lack of business integrity or business honesty must be disclosed. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records; (3) receiving stolen property; (4) conviction under state or federal antitrust statutes; and (5) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.
- 5.32 **Injunctions.** Should Kansas be prevented or enjoined from proceeding with their Contract before or after contract execution by reason of any litigation or other reason beyond the control of the State, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.
- 5.33 **Statutes.** Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such

provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.

- 5.34 Materials and Workmanship.** The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means necessary to complete all work required by this solicitation, within the time specified, in accordance with the provisions as specified.

The contractor shall be responsible for all work put in under these specifications and shall make good, repair, and/or replace, at the Contractor's own expense, as may be necessary, any defective work, material, etc., if, in the opinion of agency and/or Division of Purchases said issue is due to imperfection in material, design, workmanship, or contractor fault.

- 5.35 Industry Standards.** If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.
- 5.36 Federal, State, and Local Taxes.** Unless otherwise specified, the proposal price shall include all applicable federal, State, and local taxes. The Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Request. The State of Kansas is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Proposer's price quotation. The State makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

- 5.37 Accounts Receivable Set-Off Program.** During the course of this contract, if the Contractor is found to owe a debt to the State of Kansas, agency payments to the Contractor may be intercepted/setoff by the State of Kansas. Notice of the setoff action will be provided to the Contractor. The Contractor shall credit the account of the agency making the payment in an amount equal to the funds intercepted. K.S.A. 75-6201 et seq. allows the Director of Accounts and Reports in the Department of Administration setoff funds the State of Kansas owes Contractors against debts owed by the Contractors to the State of Kansas. Payments setoff in this manner constitutes lawful payment for services or goods received. The Contractor benefits fully from the payment because its obligation to the State is reduced by the amount subject to setoff.

- 5.38 Fixed Costs Final and Full.**

- A. All reasonable and necessary labor, software, and services to make this K-CRAFTS Project timely operational shall be included in the proposal and included in the fixed costs. For purposes of the K-CRAFTS Project, Contractor shall be responsible for implementing the IRP System of the State's RFP, Bid Event Number EVT0001929. Contractor shall not be responsible for implementing the IFTA and ABC components of the RFP. The Contractor is responsible for all additional costs not included in the proposal and required to satisfactorily complete the scope of services requested and the State's requirements associated with the IRP System implementation.
- B. This is a firm fixed price contract with payment(s) made only for defined and accepted deliverables. A list of deliverables required includes:

Project Management Plan
Detailed Project Plan
Gap Analysis and Customization Plan
Requirements Traceability Matrix

Functional Requirements Document
 System Interface Plan
 Capacity and Performance Plan
 Master Test Plan
 Data Conversion Plan and Data Migration Completed
 Module Delivery (IRP, Audit, Case Management, Docketing, Revenue
 Accounting and Distribution)
 Training Plan
 Setup of Help Desk

A five (5) day review and testing before sign-off acceptance for each deliverable.

- C. Prices shall remain firm for the entire contract period and subsequent renewals. Prices quoted shall be net delivered, including all trade, quantity, and cash discounts.
- D. Any price reductions available during the contract period shall be offered to the State of Kansas.
- E. Failure to provide available price reductions may result in termination of the contract.
- F. The State will not award or contract for any arrangement that uses estimates, "time and materials," or payments based on "progress" or elapsed time.
- G. This is a firm fixed price Contract with payment(s) made only for defined and accepted Deliverables. The total price for this Contract shall not exceed \$1,937,580.00 (One Million Nine Hundred and Thirty-Seven Thousand and Five Hundred and Eighty Dollars), (except for post implementation maintenance and services costs identified in subsection (I)) and the total price shall be subject to the terms and conditions set forth herein.
- H. The exact payment per deliverable is set out in Attachment 2 - Statement of Work.
- I. This Contract shall also include the State's option to enter into a maintenance and services agreement (See Attachment 4) with Contractor for at least three (3) successive years after implementation into production of the IRP System in the State of Kansas. If at any time, the Contractor stops supporting the IRP System or refuses to perform maintenance and services work for the State at an annual price that is equivalent or less than the price terms in Attachment 2, the Contractor shall provide the State with the Source Code to the IRP System at no charge.

5.39 Definite Quantity Contract. This Request is for a close-ended contract between the Proposer and the State to furnish a predetermined quantity of a good or service in a given period of time.

5.40 HIPAA Confidentiality. Per the Health Insurance Portability and Accountability Act (1996) (HIPAA), the agency is a covered entity under the act and therefore Contractor is not permitted to use or disclose health information in ways that the agency could not. This protection continues as long as the data is in the hands of the Contractor.

The Contractor shall establish and maintain procedures and controls acceptable to the agency to protect the privacy of members' information. Unless the Contractor has the member's written consent, the Contractor shall not use any personally identifiable information obtained for any reason other than that mandated by this contract.

5.41 No Off-shore Sourcing. The Contractor, including all subcontractors, agrees that any and all work or services under this contract will be performed at a location within the

United States or Canada unless specifically exempted by this Contract or by subsequent agreed upon amendment by the parties.

Contractor has a branch office in Baroda, India. Contractor will utilize Baroda office resources to assist with quality assurance and testing activities to meet tight deadlines such as the implementation date that the parties are confronted with for the IRP component of the K-CRAFTS project. Contractor may need to utilize additional resources from the Baroda office to complete the IRP component of the K-CRAFTS project on schedule, implementation date of January 1, 2014, and will notify the State, in advance, when use such additional resources become necessary to implement the IRP System by the implementation date.

- 5.42 Immigration and Reform Control Act of 1986 (IRCA).** All Contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the Contractor as well as any sub-contractor or sub-contractors. The usual method of verification is through the Employment Verification (I-9) form.

With the submission of this proposal, the Contractor must certify without exception that such Contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the State's option, may subject the contract to termination for cause and any applicable damages.

Unless provided otherwise herein, all Contractors are expected to be able to produce for the State any documentation or other such evidence to verify Contractor's IRCA compliance with any provision, duty, certification, or like item under the contract.

Contractor will provide a copy of a signed Certification Regarding Immigration Reform and Control Form (see RFP Section 6) with the signed contract.

- 5.43 Implied Requirements.** All products and services not specifically mentioned in this solicitation, but which are necessary to provide the functional capabilities described by the Specifications, shall be included. Furthermore, all products and services required to make the Contractor's proposal functional shall be identified in the Contractor's proposal. If additional products or services are later found to be necessary to make the Contractor's proposal functional, or to make the Contractor's proposal compliant with the Specifications, regardless of whether the additional needed products or Services are identified as being necessary by the State or the Contractor, such products or services shall be provided by the Contractor at no charge to the State.
- 5.44 Ownership.** All data, forms, procedures, software, manuals, system descriptions, and work flows developed or accumulated by the Contractor under this contract shall be owned by the using agency. The Contractor may not release any materials without the written approval of KDOR.
- 5.45 Data.** Any and all data required to be provided at any time during the procurement process or contract term shall be made available in a format as requested and/or approved by the State.
- 5.46 Vendor Contracts.** The parties shall include copies of any contracts, agreements, licenses, warranties, etc. that are referenced in this contract or this contract's attachments. State of Kansas form DA-146a remains a mandatory requirement in all contracts.

- 5.47 **Blank Term.** This term intentionally left blank
- 5.48 **Licenses.** Contractor grants the State, including its agents and employees, an irrevocable, perpetual, non-exclusive, royalty-free license to use the IRP System, including Contractor's Pre-Existing Software and any Custom Software developed pursuant to this contract, and for the IRP System's use by the State to execute, reproduce, display, perform, distribute copies of, and prepare derivative works based on such proprietary items, including derivative works developed through the K-CRAFT project. The IRP System license, granted by Contractor to the State, shall permit the State to access the IRP System from within or outside the State to carry out Kansas business requirements and Specifications that are set out in this contract, RFP, and Proposal. The IRP System license, granted by Contractor to the State, shall include derivative works of the IRP System resulting from maintenance, or services work performed by the Contractor.
- The State shall have the right to purchase Contractor's IRP System Source Code at any time in a manner described in Sec. 1.15.1 of Attachment 2 – Statement of Work.
- 5.49 **Acceptance.** No contract provision or use of items by the State shall constitute acceptance or relieve the Contractor of liability in respect to any expressed or implied warranties. All expressed and implied warranties not otherwise contained herein shall not be waived.
- 5.50 **Payment Retainage.** An amount representing twenty (20) percent of each deliverable payment amount payable under this Contract, pursuant to "1.15.2 Schedule for Deliverables with Payments" in the Statement of Work, shall be withheld by the State until 90 days after the final State approval of all deliverables, listed in 1.15.2 in the Statement of Work, relating to each respective phase, are performed by the Contractor under this Contract (excluding maintenance services referenced in Attachment 4) and formal acceptance by the State of the new K-CRAFTS system, via implementation of the IRP System into production with expected functionality. Compensation is not deemed to have been earned until all conditions precedent to payment have been met.
- 5.51 **Equipment.** All proposed equipment, equipment options, and hardware expansions must be identified by manufacturer and model number and descriptive literature of such equipment must be submitted with the proposal.
- 5.52 **Transition Assistance.** In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to the State to allow for a functional transition to another Contractor. Contractor shall be responsible for all associated costs and expenses for such transfer.
- 5.53 **Award.** Award will be by line item or group total, whichever is in the best interest of the State of Kansas.
- 5.54 **Certification of Materials Submitted.** The response to this request, together with the specifications set forth herein, and all data submitted by the Contractor to support the response including brochures, manuals, and descriptions covering the operating characteristics of the item(s) proposed, shall become a part of any contract between the successful Proposer and the State of Kansas. Any written representation covering such matters as reliability of the item(s), the experience of other users, or warranties of performance shall be incorporated by reference into the contract.
- 5.55 **Inspection.** The State reserves the right to reject, on arrival at destination, any items which do not conform to the specifications of this Request.

- 5.56 **Background Checks and Investigations of Staff.** The State may, at its sole discretion, conduct background checks and investigations of Contractor's staff. Contractor and Staff consent and agree to supply such personal information, including a full set of finger prints able to be processed and any additional information as may be required by the K-CRAFTS Project Manager and the Kansas Bureau of Investigation to perform background checks and investigations. Contractor is responsible for getting staff consent prior to starting work on this contract.
- 5.57 **Recruiting of State Staff.** Neither the Contractor nor any of its Subcontractors shall directly recruit any State staff for employment or subcontracting opportunities for the duration of the contract. Further, neither the Contractor nor any of its Subcontractors shall contact, hire, contract, or subcontract with any State employee who worked on the K-CRAFTS Project in any way for a period of two years after any employee's termination of employment with the State without the written consent of the Secretary of Revenue or the Secretary's designee.
- 5.58 **Deliverable Performance.** Contractor warrants that it will timely perform all deliverables by the established deadlines.
- 5.59 **Warranty.** Contractor agrees to a "standard" warranty of one year from date of final acceptance of phase 1 of the IRP System. This warranty to the State shall be also included in the cost of the contract and Contractor warrants the following:
- A. The Contractor (including any subcontractors) will be the sole point of contact on any problems with all software, equipment, or systems during the warranty period.
 - B. The Contractor shall be responsible for all work performed under these specifications. The Contractor shall make good, repair and replace, at the Contractor's own expense, as may be necessary, any defective work, if in the opinion of agency and/or Division of Purchases said defect is due to imperfection in material, design, or workmanship for the warranty period specified.
 - C. Contractor represents and warrants to the State as follows, and Contractor acknowledges that all of such representations and warranties in its responses to the RFP (including the representations that Contractor meets the minimum qualifications contained in the RFP) are material and have been relied upon by the State in: (i) selecting Contractor to perform the services described in the RFP and this Contract; and (ii) entering into this Contract. Contractor agrees and warrants the following:
 - 1. **Corporate Existence and Authority.** Contractor is a corporation existing and in good standing under the laws of the State of Arizona, is qualified to do business in the State of Kansas, is properly registered with the Kansas Secretary of State, and has all necessary power and authority to enter into this Contract and to perform all of its obligations pursuant to this Contract. Contractor shall provide prompt notice to the State of any merger or combination with any other entity during the term of this Contract. In the event that a merger, dissolution, or sale of a substantial portion of the assets of the Contractor is contemplated, the provisions of Section 5.25 shall apply.
 - 2. **No Conflict.** Neither the execution and delivery of this Contract, nor the fulfillment of or compliance with the terms and conditions of this Contract, nor the consummation of the transactions contemplated by this Contract conflicts with or results in a breach of the terms, conditions, or provisions of any other contract, agreement, instrument, or order of any court, governmental body, or

administrative agency to which Contractor is a party or by which Contractor or its property is bound.

3. **Duly Authorized.** The execution and delivery of this Contract has been duly authorized by all necessary corporate action of Contractor and constitutes the valid, legal, and binding obligation of Contractor, enforceable in accordance with its terms.
 4. **Proprietary Information and Licenses.** Contractor shall disclose to the State upon request all relevant proprietary information related to the Project. Contractor warrants: 1) That this proposal is an original work and has not been submitted for publication or published in any other medium; 2) That this proposal will not violate any rights of third parties; 3) That this proposal does not contain any libelous material; and 4) That all information contained within this proposal that the Contractor deems proprietary or represents trade secrets has been properly marked and submitted in accordance with RFP Section 2.7. Contractor agrees to waive any legal remedy Contractor may have against State and to indemnify and hold the State harmless from any claim, demand, suit, action, proceeding, or prosecution (including liability, loss, expense, attorney's fees, or any damage) asserted or instituted by reason of the submitted proposal or other information provided to the State by Contractor. The State shall have the right in its discretion to extend the benefit of this indemnification to any person or entity at any time, and Contractor shall be liable as if originally made by the State.
 5. **All Statements True.** All statements and representations made to the State by Contractor in the Proposal, during the selection process (including oral interviews), during the negotiation of this Contract, and in the performance of this Contract are true and correct as of the date of this Contract.
- D. Contractor warrants that any deliverables provided pursuant to the applicable Statement of Work will perform substantially in accordance with the specifications set out in the Statement of Work. Contractor's obligation hereunder will be to promptly:
- (i) Bring such deliverables into substantial compliance with the specifications, at Contractor's sole expense; or
 - (ii) Grant the State a full refund of all the amounts paid by the State relating to any such non-conforming deliverables.
1. If Contractor receives written notice of such defects during the warranty period, Contractor shall immediately repair, fix, or make workable, that portion of its work products which are determined by the State to be defective.
 2. The warranty period begins on the date of Final Acceptance of the IRP System, via implementation of the IRP System, Phase 1, into production. "Final Acceptance" shall mean the date the State has accepted all Deliverables and Services required by this contract, in the manner described in the Statement of Work, Section 1.13, relating to Phase 1, for purposes of this warranty section. In addition, if a Deliverable has been completed by the Contractor and accepted by the State in advance of the Final Acceptance date, Contractor shall be responsible for conforming with these warranty requirements, as they relate to the Deliverable, beginning upon Deliverable acceptance, through to the Final Acceptance date, and the following one year Warranty period. Furthermore, Contractor shall be responsible for conforming with these requirements, as they relate to the Deliverables associated with the "Title Management System for IRP" during the warranty period.

3. Warranty repairs will be made at no cost to the State. Contractor will pay all cost of consulting services related to such repairs and all cost of travel, lodging, and related out-of-pocket costs for visits to the State sites which are necessary to affect such repairs.

4. **Response Time.** Contractor warrants that will timely respond to requests for warranty or other services under this contract and thereafter Contractor shall remedy any programming errors, defects, or breach of warranty promptly at no charge or cost to the State. In the event that the System is inoperable, Contractor shall immediately apply such resources as are necessary to correct any problems. Contractor shall respond to emergency requests using both the Issues tracking system and a phone call to the escalation help desk for service and any warranty immediately and no later than one hour and correct any such problems. Contractor agrees that its failure to respond to State's request for service within the timeframes identified herein will result in the Contractor being financially liable and responsible for all costs and expenses the State incurs for finding a third party to solve or fix any problems with the work under this Contract.

E. **Keys, Time Locks, Access, Source Code, and Electronic Software Disablement and Repossession Warranty.** Contractor represents and warrants that it will not under any circumstances or conditions install various disabling devices, access codes, traps, copy-protection devices, keys, time or date bugs, lock-up or deactivating devices, time bombs, termination by remote access, removal of source code, or other programs or code in the software or work product which could erase, corrupt, restrict use of, modify any data of the State, freeze, interfere with, or prevent the State's use of the software or its computing environment, destroy or terminate software or work product or data contained in it, or bypass any internal or external software security measure in order to obtain access to the systems or data of the State without the written consent of the State. Contractor also warrants that no other similar types of electronic techniques will be used at anytime in the future. Should any such device appear at any time in the system, software, or work product, Contractor agrees to pay for any and all damages, expenses, costs, and lost revenue, including reasonable attorney's fees incurred by the State. Contractor shall also agree to pay punitive damages for installing any such disabling device as determined by a Kansas State Court.

F. This warranty period shall be concurrent with the first year of the parties' Maintenance and Services agreement referenced in Sec. 1.14 of the SOW, Attachment 2.

5.60 Performance Guarantees. The following are areas where Contractor guarantees performance. Failure to meet the required performance standards or guarantees will result in the Contractor being assessed and responsible for performance guarantee amounts as listed in this Section.

Contractor shall be responsible for self-reporting performance failures or errors and timely submitting liquidated damages amounts due to the State. Contractor shall establish and maintain a system to monitor and report performance. Contractor will submit a measurement report to the State ten business days after the end of each calendar month unless otherwise waived by the State. Contractor plans to address the measurement report by having weekly status reviews with the State's K-CRAFT project team to address issues, action items reviewed, and risks raised and mitigation plans put in place. The measurement report will include all data reasonably necessary to evaluate whether liquidated damages are due and shall be in a format determined by the State.

The measuring period for the purpose of considering and calculating performance guarantees shall be on a monthly basis, unless otherwise indicated. Contractor shall work with State in good faith to provide additional information reasonably requested by State for evaluation of liquidated damages. The State shall waive any liquidated damages otherwise payable by the Contractor under this section if the Contractor can demonstrate to the State's satisfaction that a performance standard failure was attributable to an uncontrollable circumstance (i.e., an external event not reasonably within Contractor's ability to control or the State's failure to meet an agreed upon project plan deadline for a State-assigned responsibility). State shall work in good faith with Contractor when determining when an uncontrollable circumstance has occurred. The parties intend the liquidated damages amounts stated in this Article to compensate, and not punish for, a breach of the conditions indicated below:

- A. Failure of Contractor to timely and successfully provide an IRP System for implementation and production by January 1, 2014, that satisfies the agreed upon requirements and specifications of the State. Such failure shall result in a \$75,000 per day liquidated damages assessment against the Contractor.
- B. Failure of the IRP System to comply with the service level agreement requirement that the solution provide full functionality 24 hours/day, 7 days/week, 99% of the time, excepting scheduled maintenance, pursuant to SLA-1.00. Such failures shall be determined on a weekly basis and the Contractor agrees and shall pay the State \$2,500.00 per weekly occurrence. If there is a network issue or infrastructure issue for which the State is in control and/or which is out of Celtic's control this liquidated damage will not apply.
- C. Reassignment of key personnel without the State's timely written approval. Contractor agrees and shall pay the State \$10,000 per occurrence for failure to timely get written approval of reassignment of key personnel.
- D. Failure to timely and diligently respond in a case of a disaster assistance request. Contractor agrees and shall pay all damages, costs, and expenses associated with this type of event for failure to timely respond.
- E. Failure of Contractor to timely and successfully provide the KITO an approved, detailed project plan. Contractor agrees and shall pay the State \$100,000 for this failure.
- F. Responses to Legislative Requests are regularly due within two business days. Contractor agrees and shall pay \$2,000 to the State per occurrence for failure to timely meet the stated deadline for Legislative Requests.

There shall be a total dollar cap on liquidated damages that may be assessed, pursuant to this section, by the State against the Contractor of \$500,000.00, including any costs identified in this section for attorney fees, costs and expenses.

Prompt resolution of problems or issues is expected but will not reduce or eliminate any performance guarantee amounts imposed due to failure to meet the standards outlined below. Performance guarantees shall be automatically assessed unless otherwise waived in writing by the State. If Contractor fails to meet the proposed standards, the performance guarantee described herein will be one remedy available to the State for such failure, along with all other remedies at law and in equity. Contractor has 30 calendar days to dispute in writing any amounts due. However, all performance guarantees are due within 60 calendar days after assessment regardless of the status of any disputed amount. Otherwise, Contractor shall pay an additional amount of \$5000 per day payment if not received by the State when due unless otherwise setoff by the State.

The State has final authority to determine whether a disputed assessment of performance guarantee will be credited to Contractor. The State will respond to any dispute within 30 days of receipt. The Contractor shall also pay the State's reasonable attorney's fees, costs, and expenses incurred should any matter be contested by Contractor, including but not limited to court and mediation fees and costs. In the event the State agrees with any dispute, the assessment and collection of any disputed amount will be refunded to Contractor.

5.61 Indemnity and Hold Harmless.

- A. General.** Contractor shall indemnify, defend, and hold harmless the State and its departments, agencies, and affiliates, including its officers, directors, agents, and employees, from and against all claims, demands, liability, actions, losses, and expenses (including reasonable attorneys' fees) and all other liabilities, asserted against or incurred by State without limitation relating to or arising out of, directly or indirectly, a failure to perform or breach by Contractor of this Contract, including a breach by Contractor of its obligations under this Section 4 and for bodily injury or death of any person or damage or destruction of any property, whether belonging to the State or another, excepting only injury, death, damage, or destruction, to the extent it is caused by the negligence of the State. The State shall give reasonable notice to Contractor of any such claim, loss, action, damage, expense, or other liability. Contractor shall further protect, defend, indemnify, and hold harmless the State against any damage, cost or liability, including reasonable attorney's fees, by third parties for any and all injuries to persons or damage to property arising from intentional, willful, or negligent acts or omissions of Contractor, its officers, employees, agents, or subcontractors, a criminal, fraudulent, or dishonest act by Contractor, its officers, employees, agents, or subcontractors.

The State shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to State property. The Contractor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction, or damage to State property.

- B. Intellectual Property Indemnification and Hold Harmless.** Contractor represents and warrants that any Developed Software produced hereunder does not violate any patent, copyright, trade secret, trademark, or other proprietary right of any third party, and that Contractor has the right to make disclosure and use of all such information used by Contractor in the performance of the Services. If Contractor uses any patented, trademarked, or copyrighted designs, devices, materials, or other property, tangible or intangible, in connection with its performance of its obligations under this Contract, it shall provide for such use in an approved legal manner by making a proper agreement with the patentee or owner of such trademark or copyright and shall defend and hold State harmless on any claim relating to such items or use by the Contractor or State. Specifically, if any claim of infringement is made by any third party against the State, exclusively due to the State's use of any Work Product provided by Contractor hereunder, the State shall notify Contractor and Contractor shall defend, indemnify, and hold the State harmless against any and all liability, losses, claims, expenses (including reasonable attorney's fees), demand, or damages of any kind arising out of or related to any such claim, whether or not that claim is successful. If the State is enjoined, or likely to be enjoined as determined solely by the State, from using any of the Work Product because of a claim of infringement of proprietary rights of any third party, at the State's request and option, the Contractor at its own expense shall:
- (i) Obtain for the State the right to continue using such Work Product;
 - (ii) Replace or modify the Work Product to make it non-infringing, so long as the replacement or modification conforms to the Statement of Work and does not ad-

versely impact functionality or performance of the Work Product running in the State's production environment; or

(iii) Terminate this Contract and refund all payments made by the State herein.

C. **Contractor's Negligence.** The Contractor shall also hold harmless and indemnify the State against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract, and also including but not limited to:

- (i) Any and all civil or criminal loss or damage to the extent arising out of the Contractor's intentional or unintentional failure to comply with Federal Immigration Statutes and Regulations.
- (ii) Any and all loss or damage to the extent arising out of the Contractor's intentional or unintentional failure to protect and secure personal data of any kind. The State shall in its sole discretion make the determination of this provision.

D. **Survive Termination.** The provisions of this Article survive termination of this contract.

5.62 **Insurance.** No contract will be executed unless and until appropriate insurance coverage is secured and sufficient evidence of insurance coverage is delivered to the State. Any insurance required by the State shall be in a form and substance acceptable to the State.

All required insurance shall be issued by companies that are A.M. Best A+ financially rated and duly licensed, admitted, and authorized to do business in the State of Kansas. The State of Kansas will be named as an additional insured on all coverage's, as appropriate. Required coverage's are to remain in effect throughout the term of the resulting contract and proof shall be provided to State within 48 hours of a request. Failure to maintain required insurance coverage during the term of the contract shall be considered a material breach and grounds for termination of the contract. The cost of all required insurance shall be included in the Proposer's proposal. The State may purchase the required coverage for Contractor should Contractor fail to maintain the required coverage and setoff that cost and expense against amount the State may or does owe Contractor for services under this contract.

Insurance provisions shall be at least as follows:

- A. Workers' Compensation and Employers' Liability coverage with limits consistent with Kansas statutory benefits, and, if some of the project will be done outside Kansas, the laws of the appropriate state(s) where work on the project will be done. Employers' Liability coverage with policy limits of at least \$500,000 or the statutory limit, whichever is greater.
- B. Commercial General Liability with a combined single limit of at least \$5,000,000 per occurrence written on an occurrence basis. All limits shall be in addition to defense costs.
- C. Business Automobile Liability Insurance for all owned, non-owned, and hired vehicles with a minimum combined single limit of at least \$1,000,000 per occurrence for bodily in-jury, personal injury, and/or property damage liability.
- D. Professional Liability insurance covering all staff with a limit of at least \$1,000,000 per incident and \$3,000,000 aggregate.

Subcontractors: Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates for each subcontractor. All coverage's for subcontractors shall be subject to all of the requirements stated herein.

The Proposer accepts full responsibility for payment of all insurance listed above, including but not limited to unemployment insurance and social security as well as all

income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

- 5.63 Contractor's Preexisting Obligations.** Contractor represents and warrants that Contractor, its employees and agents, are under no preexisting obligation or obligations inconsistent with the provisions of this contract. Contractor warrants that it has the right to disclose or use all ideas, processes, designs, data, and other information which Contractor had gained from third parties, and which Contractor discloses or uses in the performance of this contract.
- 5.64 Financial Interests.** Contractor shall promptly disclose in writing to the State all actual or potential financial relationships Contractor may have with respect to, or resulting from, any recommendations or advice given by Contractor to the State.
- 5.65 Notice of Litigation.** In the event of litigation involving this Contract or any matter performed or produced or related to this Contract (hereafter referred to as "Litigation"), the Contractor agrees to the following:
- a. The Contractor will promptly notify the State after learning of any Litigation.
 - b. The Contractor will cooperate fully by providing the State with all non-confidential relevant information and documents within its control as requested.
 - c. The Contractor will reasonably assist the State in the defense of any Litigation.
 - d. The Contractor will be responsible for all the litigation-related fees, costs, and expenses, including attorney's fees, of the Contractor, State of Kansas, Department of Revenue, K-CRAFTS Project, and any State Departments, Agencies, Boards of Trustees, Affiliates, Officers, Directors, Agents, and Employees when the litigation is related to the Contract. For purposes of this paragraph, "litigation" includes litigation relating to matters involving this contract. The State reserves the right to select and retain counsel.
 - e. Pending any decision, appeal, or judgment of litigation or the Settlement of any litigation or other dispute between the parties, Contractor shall proceed diligently and shall not discontinue performance of the Contract.
 - f. Contractor shall be liable and responsible for its negligent and intentional acts or omissions and the negligent and intentional acts or omissions of its employees, officers, directors, or other relative entities.
 - g. In the event the State or any of its staff is the sole, named defendant in Litigation, such party shall have discretion to defend, settle, compromise, or otherwise resolve such Litigation. Contractor shall be liable for the State's costs, expenses, and attorney's fees.
 - h. In the event the Contractor or any of its staff is the sole, named defendant in any Litigation related to this Contract, the Contractor shall keep the State informed of the status of the Litigation and any decision to settle, compromise, or otherwise resolve the Litigation. However, any settlement, compromise, or other resolution must be approved in writing by the State.
 - i. In the event the State and Contractor are codefendants in any Litigation, the parties will cooperate fully with each other to defend, settle, compromise, or otherwise resolve such Litigation consistent with the terms of this Contract.
 - j. In the event any entity other than the State or Contractor is named as a defendant in Litigation related to this contract, the State can elect to defend, settle, compromise, or otherwise resolve such Litigation with respect to those other entities. Contractor shall be liable for the State's costs, expenses, and attorney's fees.
 - k. Contractor shall timely notify the State of any suit or investigation by a public entity involving similar services under a contract with another State.
- 5.66 Payment.** Payment Terms are Net 30 days. Payment date and receipt of order date shall be based upon K.S.A. 75-6403(b). This Statute requires state agencies to pay the

full amount due for goods or services on or before the 30th calendar day after the date the agency receives such goods or services or the bill for the goods and services, whichever is later, unless other provisions for payment are agreed to in writing by the Contractor and the state agency. NOTE: If the 30th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following work day will become the required payment date. In the event there is a dispute regarding performance of service or deliverables the State may offset it against any amounts owed to Contractor.

Payments shall not be made for costs or items not listed in the Contractor's proposal, response, or bid. Payment by State may be withheld in any reasonable amount to ensure proper performance.

Payment schedule shall be on a frequency mutually agreed upon by both the agency and the Contractor and must be in accordance with Cost Tab 3, Schedule 3 – Deliverables Payment (see RFP Section 4.9) from the Final Contract. If portions of this definition are deemed to be inconsistent with Section 5.50 (Payment Retainage) and Section 5.71 (Acceptance of Deliverables and Services – The Quality Assurance Review Process, those definitions and methods of payment shall control.

- 5.67 **Viruses.** The Contractor shall take all precautions that are reasonable, customary, and commercially practical to avoid providing the State with any software that contains or introduces a virus which contaminates or damages the State's equipment or its mainframe, network, personal computing, or other operating environments' hardware including the hardware or software of any third party authorized to be connected to the State's computing environments.
- 5.68 **Independent Project Assistance.** The State may elect to retain one or more third parties to provide independent technology, procedure, project management, quality assurance monitoring, and/or other management assistance in the contract negotiations and implementation process resulting from this RFP. The objective of this external assistance is to provide an independent assessment of project progress and problems, provide management assistance as determined by the State, and proactively recommend strategies and actions to avoid or mitigate project risks. The Contractor shall work cooperatively with any such third party; share all Contractor project management and implementation-related plans, working papers, and documentation associated with the project; and maintain a candid and open communication forum with the third party as well as the State.
- 5.69 **Project Management Methodology.** The State of Kansas has adopted a uniform Project Management Methodology for all Information Technology (IT) projects valued at \$250,000 or more. The methodology can be found at <http://da.state.ks.us/kito> under "IT Project Management." Kansas has enacted comprehensive statutes (K.S.A. 75-7203 et. seq.) dealing with the architecture, management, and oversight of IT activities statewide. The Information Technology Executive Council (ITEC), implementing their oversight responsibilities under those statutes, has adopted ITEC Policy 2500, which can be found at <http://www.da.ks.gov/itec/ITPoliciesMain.htm>. That policy sets forth project reporting requirements.

The Contractor shall deliver to the agency all information regarding contractor performance necessary for the agency to meet its project reporting obligations under ITEC policies. Such information may include, but shall not be limited to:

- A. Work Breakdown Structure:
 - (i) With summary level tasks; and
 - (ii) With individual tasks at less than or equal to 80 hours apiece.
- B. Estimated cost to completion data;

- C. Gantt charts:
- (i) With critical path identification;
 - (ii) With identifying milestones;
 - (iii) Showing progress to date;
 - (iv) With identified start and finish dates for all tasks; and
 - (v) Correlated one-to-one with the Work Breakdown Structure.

When requested by the State, the project reporting information shall be provided in compatible electronic form, as well as printed output. The State uses Microsoft Project 2007 as its primary project management software package.

Larger or more complex projects, or projects encountering difficulties, may require additional data reports, or an increased reporting frequency. Such additional requirements shall be maintained and supported by the Contractor, if required by the agency to meet the requirements of the Kansas Information Technology Office (KITO) or the legislative Joint Committee on Information Technology (JCIT).

5.70 Acceptance of Deliverables and Services – The Quality Assurance Review Process (QARP). The State will accept all Deliverables and Services according to the Quality Assurance Review Process (QARP) described below. This process shall be followed in conformance with any acceptance and payment process and criteria specifically designed for this Contract.

- A. In each instance, parties shall mutually agree on the acceptance criteria for each Deliverable or Service prior to starting development of that Deliverable or Service. The Contractor is responsible for ensuring that the agreed to format is documented and signed by the State's K-CRAFTS Project Manager and the Contractor Project Manager prior to initiating activities.
- B. After the Contractor has completed a Deliverable or Service under this Contract, the Contractor shall submit such completed Service or Deliverable along with a formal acceptance letter and a signed copy of the agreed upon acceptance criteria to the State's K-CRAFTS Project Manager (or designee) for approval. Unless otherwise specified and agreed to, Contractor shall submit five paper hardcopies (if a document) and one copy in editable electronic format on CD.
- C. The State's K-CRAFTS Project Manager (or designee) shall have up to five or otherwise mutually agreed upon number of working days following receipt of each Deliverable to complete the QARP process. Deliverables received after 10:00 a.m. will be considered delivered the next working day.
- D. If the Deliverable provided by the Contractor is accepted by the K-CRAFTS Project Manager under QARP, the State's K-CRAFTS Project Manager shall notify Contractor by returning the signed acceptance letter within five or otherwise mutually agreed to number of working days of receipt of the Deliverable from Contractor.
- E. Contractor shall submit to the State a written invoice for all QARP – accepted Deliverables.
- F. The State's K-CRAFTS Project Manager shall notify the Contractor in writing within ten or other-wise mutually agreed to number of working days of receipt of a Deliverable from the Contractor if a Deliverable or any portion thereof is unacceptable under the QARP, and shall set forth the particularity and specificity of the reason for the rejection of the Deliverable.
- G. Contractor shall have up to five or otherwise mutually agreed to number of working days from the date of receipt of written notification of rejection of a Deliverable to

correct the deficiency or deficiencies and bring the Deliverable into compliance with the requirements of the Contract. Should rejection of the deliverable impact the content of other non-completed deliverables, the Contractor and the State's K-CRAFTS Project Manager must determine a mutually agreed to number of days for re-submission that minimizes the overall impact to the project schedule.

- H. Upon receipt of such Deliverable resubmitted for approval, the State's K-CRAFTS Project Manager shall have up to five or otherwise mutually agreed to number of working days to determine whether the deficiencies specified in the rejection notice have been corrected. This subsequent review shall be limited to the original deficiencies and the portions of the deliverable that were dependent on the deficiencies.
- I. After the above process is repeated and if the deliverable or any portion thereof is again found to be unacceptable, the process described in this section shall be repeated until: (a) Acceptance by the State's K-CRAFTS Project Manager; or (b) The State, at its option, terminates the Contract for cause as specified within the Contract; or (c) The State's K-CRAFTS Project Manager grants the Contractor a delay or waiver and documents the same in writing; or (d) The State and the Contractor mutually agree to amend the contract.
- J. No invoice shall be honored by the State unless and until prior acceptance through the QARP process is obtained for the Deliverable or Service relating to said invoice.
- K. During the summer of 2013, the State's K-CRAFTS Project Manager and the Contractor's project manager shall develop agreed upon, detailed criteria and metrics for the State determination that the IRP System is ready for implementation.

5.71 Technology Architectural Compliance. All information technology initiatives and acquisitions will comply with the Kansas Information Technology Architecture, which can be viewed at <http://oits.ks.gov/kito/cita/KITA.htm> (as of the date of this contract's execution).

For information technology projects with total cumulative cost greater than \$250,000, project plan documents must include an Architectural Statement for review by the Chief Information Technology Officer (CITO) of the appropriate branch.

Compliance with the Technology Architecture is assured when:

- A. An item is selected for purchase from a state contract listed in the Technology Architecture; or
- B. An item is included in a general category listed under the heading "Acceptable Standard" or "Emerging Standard" in the Technology Architecture; or
- C. The item conforms to a technical standard listed under the headings "Acceptable Standard" or "Emerging Standard" in the Technology Architecture.

Compliance with the Technology Architecture is problematic when an item conforms to a technical standard or is included in a general category under the heading "Retired Standard" in the Technology Architecture. Contractors shall provide justification for new acquisitions or initiatives that are proposed under this heading. All state contracts for information technology products must conform to the Technology Architecture. Contractor certifies and warrants that all their offerings are in conformance with the Kansas Information Technology Architecture.

5.72 Blank Term. This term intentionally left blank.

- 5.73 **Security.** The approach to security shall conform to the standards set forth by the National Institute of Standards and Technology (NIST) as detailed on their website. These standards can be found by accessing this link:
<http://csrc.nist.gov/publications/nistpubs/800-53-Rev2/sp800-53-rev2-final.pdf>.

The approach to security shall also conform to the standards set forth by the Information Technology Security Council as adopted by the Information Technology Executive Council and posted at: <http://www.da.ks.gov/itec/Documents/ITECITPolicy7230A.pdf>.

- 5.74 **Services.** In the event State requests consulting services which would result in further modification (Change Control Request) to Contractor's Kansas IRP System provided pursuant to this contract, Contractor shall support and warrant such Change Control Request pursuant to the parties' maintenance and support agreement.

5.75 **Copies of Documentation and Software.**

- A. **Additional Copies of Documentation and Software.** The State may make an unlimited number of copies of the Software and related documentation for: (i) production use according to the terms of this Contract; (ii) archive for emergency back-up purposes; (iii) training purposes; and (iv) disaster recovery testing purposes; and may modify or merge the Software with other software. State may maintain and store all copies of Documentation and Software at any location without notice to Contractor.

Contractor shall initially provide the State with two copies of the updates and new versions of the Software and a reasonable number of copies of all Documentation according to subject area. The State may also make an unlimited number of copies of Documentation solely for the State's use.

- B. **Documentation for versions and updates.** The State may make an unlimited number of copies of the new versions and updates of the Software and related documentation for: (i) Production use according to the terms of this contract; (ii) Archive for emergency back-up purposes; (iii) Training purposes; and (iv) Disaster recovery testing purposes; and may modify or merge the Software with other software. State may maintain and store all copies of Documentation and Software at any location without notice to Contractor.

Contractor shall initially provide the State with two copies of the updates and new versions of the Software and a reasonable number of copies of all Documentation according to subject area. The State may also make an unlimited number of copies of Documentation solely for the State's use.

- C. **Transfer and Assignment of Documentation.** The State may transfer and assign documentation, training manuals, etc. to any new agency, department, or other State entity without notice or permission from Contractor.

- 5.76 **Date Data Compliance.** The contractor warrants fault-free performance in the processing of date and date-related data (including, but not limited to, calculating, comparing, and sequencing) by all goods and services delivered. Fault-free performance includes, but is not limited to, the manipulation of data with correct results when using dates prior to, though, and beyond January 1, 2000, and shall be transparent to the user.

Hardware and software products, individually and in combination, shall provide the correct system date and correct calculations which utilize or refer to the date data, without human intervention, including leap year calculations. Hardware and software

products, individually and in combination, shall also provide correct results when moving forward or backward across the year 2000.

5.77 **Deliverable Date:** The Contractor agrees to have a working IRP System in place for production use in Kansas and meeting Specifications and Kansas functional and technical requirements for IRP System and H.B. 2557 (2012) by the due date of January 1, 2014.

5.78 **Blank Term.** This term intentionally left blank.

5.79 **Change Control Process**

During the term of this contract, either the State Project Manager or Contractor's Project Manager, provided an authorized State employee sponsors such change, may propose to modify the scope of the deliverables or services provided for in this contract. In such cases the party requesting the change shall forward to the other party a written Change Control Request pursuant to the protocol set forth in the attached Change Control Process. The payment structure for a Change Control Request may be either fixed fee/fixed scope or time and materials based as the State may deem to be in its best interests. Should a Change Control Request require preliminary analysis, costs for such analysis shall be borne by Contractor except in the instance of an extraordinary request, which such cost shall be agreed upon by the parties.

5.80 **Signatures.** Signatures herein shall serve to bind the parties to this Contract and Contract. The parties represent and warrant that they have the authority to execute this Contract, have read and thoroughly understand the terms, conditions and attachments.

This Contract shall be binding on any person or entity that is a successor or purchaser of Contractor.

CELTIC CROSS HOLDINGS, INC.


STATE OF KANSAS

By: 
Name: Joe McCormick
Title: President
Date: 4/2/2013

By: 
Name: Nick Jordan
Title: Secretary of Revenue for the State of Kansas
Date: 4/2/13

I hereby certify that the competitive bid/procurement laws of the State of Kansas have been followed.

State of Kansas

By: 
Name: Tracy Diehl
Title: Director of Purchases
Date: 4/2/13

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DIRECTOR OF PURCHASES